

Trump Taj Mahal Associates, a New Jersey Limited Partnership d/b/a Trump Taj Mahal Casino Resort and International Alliance of Theatrical Stage Employees, Local 917, AFL-CIO and International Union of Operating Engineers, Local 68A, AFL-CIO. Case 4-CA-20627

July 24, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On May 18, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing a request to bargain by International Alliance of Theatrical Stage Employees, Local 917, AFL-CIO and International Union of Operating Engineers, Local 68A, AFL-CIO (individually referred to as Local 917 and Local 68A, respectively, and jointly referred to as the Union) following the Union's certification in Case 4-RC-17578. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On June 18, 1992, the General Counsel filed a Motion for Summary Judgment. On June 23, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate*

Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New Jersey limited partnership, has been engaged in the operation of a hotel and casino in Atlantic City, New Jersey. During the 12-month period preceding the issuance of the complaint, the Respondent derived gross revenues in excess of \$500,000 and during the same period it purchased and received goods and materials valued in excess of \$50,000 directly from points outside the State of New Jersey. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Local 917 and Local 68A, the Unions, are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held May 20, 1991,¹ the Union was certified on March 3, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

INCLUDED: All full-time and regular part-time lead technicians and technicians employed by Respondent in its entertainment department.

EXCLUDED: All other employees, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about March 13, 1992, the Union has requested the Respondent to bargain and, since on

¹ On April 19, 1991, the Regional Director issued a Decision and Direction of Election finding the petitioned-for unit to be an appropriate unit applying the Board eligibility formula for on-call employees as set forth in *Davison-Paxon Co.*, 185 NLRB 21 (1970). The Employer filed a request for review. On May 20, 1991, the Board, Member Devaney dissenting in part, granted the Employer's request for review solely with regard to the unit inclusion and eligibility of the Employer's "casual" technicians. The Employer and Petitioner filed briefs on review in support of their positions. The Board, on February 11, 1992, Members Devaney and Oviatt, with Member Raudabaugh dissenting in part, issued a Decision on Review and Order affirming the Regional Director's decision and remanding the proceeding to the Regional Director directing him to open and count the ballots in the May 20, 1991 election. 306 NLRB No. 57.

or about March 20, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after March 20, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Trump Taj Mahal Associates, a New Jersey Limited Partnership d/b/a Trump Taj Mahal Casino Resort, Atlantic City, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Alliance of Theatrical Stage Employees, Local 917, AFL-CIO and International Union of Operating Engineers, Local 68A, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

INCLUDED: All full-time and regular part-time lead technicians and technicians employed by Respondent in its entertainment department.

EXCLUDED: All other employees, office clerical employees, guards and supervisors as defined in the Act.

(b) Post at its facility in Atlantic City, New Jersey, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 4 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Alliance of Theatrical Stage Employees, Local 917, AFL-CIO and International Union of Operating Engineers, Local 68A, AFL-CIO as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

INCLUDED: All full-time and regular part-time lead technicians and technicians em-

ployed by us in its entertainment department.

EXCLUDED: All other employees, office clerical employees, guards and supervisors as defined in the Act.

TRUMP TAJ MAHAL ASSOCIATES, A
NEW JERSEY LIMITED PARTNERSHIP
D/B/A TRUMP TAJ MAHAL CASINO
RESORT